

Washington then the personal funds held by the facility and the final accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery (or successor office).

(b) The personal funds of the deceased resident and final accounting must be conveyed to the individual or probate jurisdiction administering the resident's estate or to the state of Washington, department of social and health services, office of financial recovery (or successor office) no later than the forty-fifth day after the date of the resident's death.

(i) When the personal funds of the deceased resident are to be paid to the state of Washington, those funds shall be paid by the facility with a certified check or cashier's check made payable to the secretary, department of social and health services, and mailed to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.

(ii) The certified check or cashier's check shall contain the name and social security number of the deceased individual from whose personal funds account the monies are being paid.

(c) The department of social and health services shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident leaves the nursing home without authorization and the resident's whereabouts is unknown:

(a) The nursing facility shall make a reasonable attempt to locate the missing resident. This includes contacting:

- (i) Friends,
- (ii) Relatives,
- (iii) Police,
- (iv) The guardian, and
- (v) The community services office in the area.

(b) If the resident cannot be located after ninety days, the nursing facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The nursing facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the sale or other transfer of ownership of the nursing facility business, the facility operator shall:

- (a) Provide each resident or resident representative with a written accounting of any personal funds held by the facility;
- (b) Provide the new operator with a written accounting of all resident funds being transferred; and
- (c) Obtain a written receipt for those funds from the new operator.

AMENDATORY SECTION (Amending Order 1613, filed 2/25/81)

WAC 388-96-501 Allowable costs. (1) Allowable costs are documented costs which are necessary, ordinary and related to the care of medical care recipients, and are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

(2) Beginning with the July 1, 1995 rate period, allowable costs shall not include costs reported by a nursing facility for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the prospective rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-585 Unallowable costs. (1) The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) The department shall include, but not limit unallowable costs to the following:

(a) Costs of items or services not covered by the medical care program. Costs of nonprogram items or services even if indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items covered by the Medicaid program but not included in the Medicaid nursing facility daily payment rate. Items and services covered by the Medicaid nursing facility daily payment rate are listed in chapters 388-86 and 388-88 WAC;

(c) Costs associated with a capital expenditure subject to Section 1122 approval (Part 100, Title 42 C.F.R.) if the department found the capital expenditure inconsistent with applicable standards, criteria, or plans. If the contractor did not give the department timely notice of a proposed capital expenditure, all associated costs shall be nonallowable as of the date the costs are determined not to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Costs of outside activities (e.g., costs allocable to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space);

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or violating principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods circumventing the principles of the prospective cost-related reimbursement system;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:

- (i) The debt is related to covered services;
- (ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

Reasonable collection efforts shall consist of three documented attempts by the contractor to obtain payment. Such documentation shall demonstrate the effort devoted to collect the bad debts of Title XIX recipients is at the same level as the effort normally devoted by the contractor to collect the bad debts of non-Title XIX patients. Should a contractor collect on a bad debt, in whole or in part, after filing a cost report, reimbursement for the debt by the department shall be refunded to the department to the extent of recovery. The department shall compensate a contractor for bad debts of Title XIX recipients at final settlement through the final settlement process only.

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in patient activity programs where clothing is a part of routine care;

(r) Fund-raising expenses, except expenses directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of any employee benefit not in fact made available to all employees on an equal or fair basis in terms of costs to employees and benefits commensurate to such costs, e.g., key-man insurance, other insurance, or retirement plans;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses for membership in professional organizations and all expenses of maintaining professional licenses, e.g., nursing home administrator's license;

(bb) Costs related to agreements not to compete;

(cc) Goodwill and amortization of goodwill;

(dd) Expense related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:

(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or

(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or

(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or

(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered.

(ff) Legal and consultant fees in connection with a lawsuit against the department, including suits which are appeals of administrative decisions;

(gg) Lease acquisition costs and other intangibles not related to patient care;

(hh) Interest charges assessed by the state of Washington for failure to make timely refund of overpayments and interest expenses incurred for loans obtained to make such refunds;

(ii) Beginning January 1, 1985, lease costs, including operating and capital leases, except for office equipment operating lease costs;

(jj) Beginning January 1, 1985, interest costs;

(kk) Travel expenses outside the states of Idaho, Oregon, and Washington, and the Province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing home will be allowed whether inside or outside these areas if such travel is necessary, ordinary, and related to patient care;

(ll) Board of director fees for services in excess of one hundred dollars per board member, per meeting, not to exceed twelve meetings per year;

(mm) Moving expenses of employees in the absence of a demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the Province of British Columbia;

(nn) For rates effective after June 30, 1993, depreciation expense in excess of four thousand dollars per year for each passenger car or other vehicles primarily used for the administrator, facility staff, or central office staff;

(oo) Any costs associated with the use of temporary health care personnel from any nursing pool not registered with the director of the department of health at the time of such pool personnel use;

(pp) Costs of payroll taxes associated with compensation in excess of allowable compensation for owners, relatives, and administrative personnel;

(qq) Department-imposed postsurvey charges incurred by the facility as a result of subsequent inspections which occur beyond the first postsurvey visit during the certification survey calendar year;

(rr) For all partial or whole rate periods after July 17, 1984, costs of assets, including all depreciable assets and land, which cannot be reimbursed under the provisions of the Deficit Reduction Act of 1984 (DEFRA) and state statutes and regulations implementing DEFRA;

(ss) Effective for July 1, 1991, and all following rates, compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensations which would have been paid for such hours of nursing care services had they been paid at the combined regular and overtime average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification of registered nurse, licensed practical nurse, or nursing assistant at the same nursing facility, as reported on the facility's filed cost report for the most recent cost report period;

(tt) Outside consultation expenses required pursuant to WAC 388-88-135;

(uu) Fees associated with filing a bankruptcy petition under chapters VII, XI, and XIII, pursuant to the Bankruptcy Reform Act of 1978, Public Law 95-598;

(vv) All advertising or promotional costs of any kind, except reasonable costs of classified advertising in trade journals, local newspapers, or similar publications for employment of necessary staff;

(ww) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-704 Prospective reimbursement rates.

(1) The department ~~((will))~~, as provided in chapter 74.46 RCW and this chapter, shall determine or adjust prospective ~~((reimbursement))~~ Medicaid payment rates for nursing facility services provided to medical care recipients. Each rate represents ~~((the contractor's))~~ a nursing facility's maximum compensation for one ~~((patient))~~ resident day of care ~~((of))~~ provided a medical care recipient determined by the department to both require and be eligible to receive nursing facility care.

(2) A contractor may also be assigned an individual prospective rate for a specific medical care recipient determined by the department to require exceptional care.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds. (1) The department will revise a contractor's prospective rate when the contractor reduces the number of its licensed beds and:

(a) Notifies the department in writing thirty days before the licensed bed reduction; and

(b) Supplies a copy of the new bed license and documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any; and

(c) Requests a rate revision.

(2) The revised prospective rate shall comply with all the provisions of rate setting contained in this chapter including all lids and maximums unless otherwise specified in this section and shall remain in effect until ((a prospective rate can be set according to WAC 388-96-713)) an adjust-

ment can be made for economic trends and conditions as authorized by chapter 74.46 RCW and this chapter.

(3) The revised prospective rate shall be effective the first of a month determined by where in the month the effective date of the licensed bed reduction occurs or the date the contractor complied with subsections 1(a), (b), and (c) of this section as follows:

(a) If the contractor complied with subsection (1)(a), (b), and (c) of this section and the effective date of the reduction falls:

(i) Between the first and the fifteenth of the month, then the revised prospective rate is effective the first of the month in which the reduction occurs; or

(ii) Between the sixteenth and the end of the month, then the revised prospective rate is effective the first of the month following the month in which the reduction occurs; or

(b) When the contractor fails to comply with subsection 1(a) of this section, then the date the department receives from the contractor the documentation that is required by subsection 1(b) and (c) of this section shall become the effective date of the reduction for the purpose of applying subsection (3)(a)(i) and (ii) of this section.

(4) For ~~((the first fiscal year of a state biennium, if a contractor's prospective rate is based on either WAC 388-96-710(1) or WAC 388-96-710(2)))~~ all prospective Medicaid payment rates from July 1, 1995 through June 30, 1998, the department shall revise ((the contractor's)) a nursing facility's prospective rate to reflect a reduction in licensed beds as follows:

(a) ~~((For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;~~

(b) ~~For property, administrative, and operational cost centers; and return on investment rate, the department will use the reduced total of licensed beds to determine occupancy level under WAC 388-96-710(10). If the department computed the contractor's occupancy level of licensed beds on the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs and the occupancy level:~~

(i) ~~Was above eighty five percent and remains above eighty five percent after the reduction, then the department will:~~

~~(A) Not change the administrative and operational rate;~~

~~(B) Recalculate the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and~~

~~(C) Recalculate the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.~~

(ii) ~~Was below eighty five percent and changes to at or above eighty five percent after the reduction, then the department will recalculate rates for:~~

~~(A) Administrative and operational cost centers using actual patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs; and~~

~~(B) Property and return on investment cost centers using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.~~

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~~(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will recompute rates for:~~

~~(A) Administrative and operational cost centers using the change in patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level; and~~

~~(B) Property and return on investment cost centers using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.~~

~~(5) For the second fiscal year of a state biennium, the department shall revise the contractor's prospective rate, as identified under subsection (4) of this section, as follows:~~

~~(a) For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;~~

~~(b) For property and return on investment rates and to determine a new occupancy level under WAC 388-96-719(10), the department will use the reduced total of licensed beds and the cost report from the prior calendar year;~~

~~(c) If the occupancy level prior to the bed reduction:~~

~~(i) Was above eighty-five percent and remains above eighty-five percent after the reduction, then the department will:~~

~~(A) Not revise the administrative or operational rates; and~~

~~(B) Recalculate the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and~~

~~(C) Recalculate the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.~~

~~(ii) Was below eighty-five percent and changes to eighty-five percent or above after the reduction, then the department will:~~

~~(A) Not revise the administrative or operational rates; and~~

~~(B) Revise property and return on investment using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.~~

~~(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will:~~

~~(A) Not revise administrative or operational rates; and~~

~~(B) Revise the property and return on investment rates using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.~~

~~(6) If a contractor's prospective rate is based on either a sample or budget per WAC 388-96-710, the department shall revise the contractor's prospective rate by applying subsection (4)(a) and (b) or (5)(a) and (b) of this section as applicable and:~~

~~(a) Using the days from the timely received budget per WAC 388-96-026(2) and using occupancy as "selected" by the department when the initial rate was set; or~~

~~(b) If the budget was not received timely in accordance with WAC 388-96-026(2), using the product of the statewide average occupancy as reported on all nursing facilities' prior calendar year Medicaid cost reports multiplied by the number of calendar days in the calendar year following the decrease licensed bed capacity multiplied by the number of licensed beds on the new license)) The department shall use the reduced total number of licensed beds to determine occupancy used to calculate the nursing services, food, administrative and operational rate components per WAC 388-96-719. If actual occupancy from the 1994 cost report was:~~

~~(i) At or over ninety percent before the reduction and remains at or above ninety percent, there will be no change to the components;~~

~~(ii) Less than ninety percent before the reduction and changes to at or above ninety percent, then recompute the components using actual 1994 resident days;~~

~~(iii) Less than ninety percent before the reduction and remains below ninety percent, then recompute the components using the change in resident days from the 1994 cost report resulting from the reduced number of licensed beds used to calculate the ninety percent.~~

~~(b) The department shall use the reduced number of licensed beds to determine occupancy used to calculate the property and return on investment (ROI) components per WAC 388-96-719. If actual occupancy from the cost report from the calendar year immediately prior to the bed reduction was:~~

~~(i) At or over ninety percent before the reduction and remains at or above ninety percent, then recompute property and ROI to reflect the new asset basis using actual days from the cost report for the prior calendar year;~~

~~(ii) Less than ninety percent before the reduction and changes to at or above ninety percent, then recompute property and ROI to reflect the new asset basis using actual days from the cost report for the prior calendar year;~~

~~(iii) Less than ninety percent before the reduction and remains below ninety percent, then recompute property and ROI to reflect the new asset basis using the change in resident days from the cost report for the prior calendar year resulting from the reduced number of licensed beds used to calculate the ninety percent.~~

~~(c) Reported occupancy must represent at least six months of data.~~

~~(d) The department will utilize a minimum of eighty-five percent occupancy in subsections (a), (b), and (c) of this section for those facilities authorized in chapter 74.46 RCW and this chapter.~~

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-710 Prospective reimbursement rate for new contractors. (1) The department shall establish an initial prospective ((reimbursement)) Medicaid payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) within sixty days following receipt by the department of a properly completed projected budget (see

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WAC 388-96-026). The rate shall take effect as of the effective date of the contract and shall comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth ((in this chapter)). The rate shall remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate shall be cost rebased as provided in this subsection only once during the period July 1, 1995 through June 30, 1998.

(2) To set the initial prospective ~~((reimbursement))~~ Medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department shall:

(a) Determine whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency;

(b) Select all nursing facilities from the department's records of all the current Medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained;

(c) Based on the information for the nursing facilities selected under subsection (2)(b) of this section and available to the department on the day the new contractor began participating in the ~~((program))~~ Medicaid payment rate system at the facility, rank from the highest to the lowest the component rates in nursing services, food, administrative, and operational cost centers and based on this ranking:

(i) Determine the ~~((rate in the))~~ middle of the ranking ~~((above and below which lie an equal number of rates (median)))~~ and then identify the rate immediately above the median for each cost center identified in subsection (2)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center; and

(ii) Set the new contractor's nursing facility component rates for each cost center identified in subsection (2)(c) at the lower of the "selected rate" or the budget rate; and

(iii) Set the property rate in accordance with the provisions of this chapter; and

(iv) Set the return on investment rate in accordance with the provisions of this chapter. In computing the financing allowance, the department shall use for the nursing services, food, administrative, and operational cost centers the rates set pursuant to subsection (2)(c)(i) and (ii) of this section.

(d) Any subsequent revisions to the rate components of the sample members will not impact a "selected rate" component of the initial prospective rate established for the new contractor under this subsection; *unless*, a "selected rate" identified in subsection (2)(c) is at the median cost limit established for July 1, then the median cost limit established after October 31 for that "selected rate" component becomes the component rate for the new contractor.

(3) ~~((If the department has not received a properly completed projected budget from the new contractor as~~

~~defined under WAC 388-96-026 (1)(a) or (b) at least sixty days prior to the effective date of the new contract.))~~ The department shall establish rates for:

(a) Nursing services, food, administrative and operational cost centers based on the "selected rates" as determined under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(b) Property in accordance with the provisions of this chapter using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received.

(c) Return on investment rate in accordance with the provisions of this chapter using the "selected rates" established under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in the program, to compute the working capital provision and variable return for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component will remain zero until the information is received.

(4) The initial prospective reimbursement rate for a new contractor as defined under WAC 388-96-026 (1)(c) ~~((shall))~~ be the last prospective reimbursement rate paid by the department to the Medicaid contractor operating the nursing facility immediately prior to the effective date of the new contract. If the WAC 388-96-026 (1)(c) contractor's initial rate:

(a) Was set before January 1, 1995, its July 1, 1995 rate will be set by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the 1994 cost report year and its July 1, 1996 and July 1, 1997 rates will not be cost rebased;

(b) Was set between January 1, 1995 and June 30, 1995, its July 1, 1995 rate will be set by using the old contractor's 1994 twelve months' cost report data and its July 1, 1996 and July 1, 1997 rates will not be cost rebased; or

(c) Is set on or after July 1, 1995, its July 1, 1996 and July 1, 1997 rates will not be cost rebased.

(5) ~~((If the new contractor as defined under WAC 388-96-026 (1)(a), (b), or (c) began participating in the program beginning in the first year of a state fiscal biennium or had its first year of a state fiscal biennium rate set under WAC 388-96-710(6), its July 1 prospective reimbursement rate for the second year of that state fiscal biennium shall:~~

~~(a) Be the initial prospective rate set in accordance with WAC 388-96-710 inflated in accordance with WAC 388-96-710; and~~

(b) Remain in effect until a prospective rate can be set under WAC 388-96-713. A prospective rate set for a new contractor shall be subject to adjustments for economic trends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

(6) ((If the new contractor began participating in the program beginning in the second year of a state fiscal biennium, its July 1 prospective reimbursement rate for the first year of the next state fiscal biennium will be set for the new contractor defined under:

(a) WAC 388-96-026 (1)(a) and (b), by applying WAC 388-96-710 (2) and (3) using the July 1 rate components established for the first year of the state's fiscal biennium following the second year of the state's fiscal biennium in which the new contractor began participating in the program; or

(b) WAC 388-96-026 (1)(c), by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the cost report year prior to the first year of the state fiscal biennium for which the rate is being set and applying WAC 388-96-719 through 388-96-754 to set the component rates)) A new contractor whose Medicaid contract was effective in calendar year 1994 and whose nursing facility occupancy during calendar year 1994 increased by at least five percent over that of the prior operator, shall have its July 1, 1995 component rates for the nursing services, food, administrative, operational and property cost centers, and its the return on investment (ROI) component rate, based upon a minimum occupancy of eighty-five percent.

(7) ((For July 1, 1993 rate setting only, if a new contractor as defined under WAC 388-96-026(1) is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such contractor shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same contractor's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date, inflated by any increase in the IPD Index authorized by WAC 388-96-719)) Notwithstanding any other provision in this chapter, for rates effective July 1, 1995 and following, for nursing facilities receiving original certificate of need approval prior to June 30, 1988, and commencing operations on or after January 1, 1995, the department shall base initial nursing services, food, administrative, and operational rate components on such component rates immediately above the median for facilities in the same county. Property and return on investment rate components shall be established as provided in chapter 74.46 RCW and this chapter.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-713 Rate determination. (1) Each ((contractor's reimbursement)) nursing facility's Medicaid payment rate for services provided to medical care recipients will be determined prospectively ((once each state biennium)) as provided in this chapter and in chapter 74.46 RCW to be effective July 1 of ((the first fiscal year of each biennium. Rates shall be adjusted as provided in this chapter to be effective July 1 of the second year of each biennium))

1995, 1996, and 1997 and may be adjusted more frequently to take into account program changes.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Beginning with rates effective July 1, 1984, contractors submitting correct and complete cost reports by March 31st, shall be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-716 Cost areas or cost centers. (1) A ((contractor's overall reimbursement)) nursing facility's total per resident day Medicaid payment rate for services provided to medical care recipients shall consist of ((the total of)) six component rates, ((each covering one)) five relating to cost areas or cost centers and a return on investment (ROI) component rate. The ((six)) five cost areas or cost centers are:

- ((1)) (a) Nursing services;
- ((2)) (b) Food;
- ((3)) (c) Administrative;
- ((4)) (d) Operational;
- ((5)) (e) Property((and
- ((6)) Return on investment))

(2) For prospective rates from July 1, 1995 through June 30, 1998, the maximum component rates for the nursing services, food, administrative, operational and property cost centers and the return on investment (ROI) component rate for each nursing facility shall be calculated utilizing a minimum licensed bed occupancy of ninety percent, unless a minimum occupancy of eighty-five percent is specifically authorized under certain circumstances by chapter 74.46 RCW and this chapter.

(3) The minimum ninety percent facility occupancy shall be used to calculate individual nursing facility component rates in all cost centers, to calculate the median cost limits (MCLs) for the metropolitan statistical area (MSA) and nonmetropolitan statistical area (non-MSA) peer groups, and to array facilities by costs in calculating the variable return portion of the return on investment (ROI) component rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-719 Method of rate determination. (1) ((The principles contained in this section are inherent in rate setting effective with July 1, 1993 and following nursing facility prospective rates.

((2- Reimbursement)) Effective July 1, 1995 through June 30, 1998, nursing facility Medicaid payment rates shall be ((established)) rebased or adjusted for economic trends and conditions annually and prospectively, on a per ((patient)) resident day basis, ((once each calendar year, to be effective July 1, and shall follow a two-year cycle corresponding to each state fiscal biennium; provided that, a nursing facility's rate for the first fiscal year of any biennium)) in accordance with the principles and methods set forth in chapter 74.46 RCW and this chapter, to take effect July 1st of each year. Unless the operator qualifies as a "new contractor" under the provisions of this chapter, a

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nursing facility's rate for July 1, 1995 must be established upon its own ~~((prior))~~ calendar year cost report data for 1994 covering at least six months.

~~((2))~~ ~~A contractor's~~ ~~((2))~~ July 1, 1995 component rates in the nursing services, food, administrative~~((:))~~ and operational cost centers ~~((for the first year of the state fiscal biennium (first fiscal year)))~~ shall be ~~((adjusted downward or upward for economic trends and conditions when set effective July 1 of the first fiscal year in accordance with subsections (4), (5) and (6) of this section, and adjusted again downward or upward for economic trends and conditions effective July 1 of the second year of the state fiscal biennium (second fiscal year) in accordance with subsections (7), (8) and (9) of this section))~~ cost-rebased utilizing desk-reviewed and adjusted costs reported for calendar year 1994, for all nursing facilities submitting at least six months of cost data. Such component rates for July 1, 1995 shall also be adjusted upward or downward for economic trends and conditions as provided in RCW 74.46.420 and in this section. Component rates in property and return on investment (ROI) shall be reset annually as provided in chapter 74.46 RCW and in this chapter.

~~((4))~~ ~~The~~ ~~((3))~~ July 1, 1995 ~~((cost center))~~ component rates ~~((referenced in subsection (2) of this section shall, for the first fiscal year of each biennium,))~~ in the nursing services, food, administrative and operational cost centers shall be adjusted by the change in the Implicit Price Deflator for Personal Consumption Expenditures Index ~~((published by the United States Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis))~~ ("IPD index"). ~~((5))~~ The period used to measure the ~~((change in the))~~ IPD ~~((index))~~ increase or decrease to be applied to these July 1, 1995 rate components shall be ~~((the))~~ calendar year ~~((preceding the July 1 commencement of the state fiscal biennium (first calendar year). The change in the IPD Index shall be calculated by:~~

~~((a))~~ Consulting the latest quarterly IPD Index available to the department no later than February 28 following the first calendar year to determine, as nearly as possible, the applicable expenditure levels as of December 31 of the first calendar year;

~~((b))~~ Subtracting from the expenditure levels taken from the quarterly IPD Index described in subsection (5)(a) of this section the expenditure levels taken from the IPD Index for the quarter occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section; and

~~((c))~~ Dividing the difference by the level of expenditures from the quarterly IPD Index occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section.

~~((6))~~ 1994.

(4) July 1, 1996 component rates in the nursing services, food, administrative and operational cost centers shall not be cost-rebased, but shall be the component rates in these cost centers assigned to each nursing facility in effect on June 30, 1996, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the Health Care Financial Administration of the United States Department of Health and Human Services (HCFA index). The period to be used to measure the HCFA index increase or decrease to

be applied to these June 30, 1996 component rates for July 1, 1996 rate setting shall be calendar year 1994.

(5) July 1, 1997 component rates in the nursing services, food, administrative and operational cost centers shall not be cost-rebased, but shall be the component rates in these cost centers assigned to each nursing facility in effect on June 30, 1997, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the Health Care Financial Administration of the United States Department of Health and Human Services (HCFA index), multiplied by a factor of 1.25. The period to be used to measure the HCFA index increase or decrease to be applied to these June 30, 1997 component rates for July 1, 1997 rate setting shall be calendar year 1996.

(6) The 1994 change in the IPD index to be applied to July 1, 1995 component rates in the nursing services, food, administrative and operational costs centers, as provided in subsection (3) of this section, shall be calculated by:

(a) Consulting the latest quarterly IPD index available to the department no later than February 28, 1995 to determine, as nearly as possible, applicable expenditure levels as of December 31, 1994;

(b) Subtracting from expenditure levels taken from the quarterly IPD index described in subsection (6)(a) of this section expenditure levels taken from the IPD index for the quarter occurring one year prior to it; and

(c) Dividing the difference by the level of expenditures from the quarterly IPD index occurring one year prior to the quarterly IPD index described in subsection (6)(a) of this section.

(7) In applying the change in the IPD index to establish ~~((first fiscal year))~~ July 1, 1995 component rates in the nursing services, food, administrative and operational cost ~~((center rates))~~ centers for a contractor having at least six months, but less than twelve months, of cost report data from ~~((the prior))~~ calendar year 1994, the department shall prorate the downward or upward adjustment by a factor obtained by dividing the contractor's actual calendar days ~~((of))~~ from 1994 cost report data by two, adding three hundred sixty-five, and dividing the resulting figure by five hundred forty-eight.

~~((7))~~ For the second year of each state fiscal biennium, a contractor's July 1 cost center rates referenced in subsection (2) of this section shall be the July 1 component rates for the first year of the state fiscal biennium, adjusted downward by any decrease, or upward by one and one-half times any increase, in the Nursing Home Input Price Index without Capital Costs published by the Health Care Financial Administration of the United States Department of Health and Human Services ("HCFA Index").

(8) ~~((The period used to measure the change in the HCFA Index shall, subject to subsection (9) of this section, be the calendar year preceding the July 1 commencement of the state fiscal biennium (first fiscal year).))~~ The change in the HCFA index to be applied to each nursing facility's June 30, 1996 and June 30, 1997 component rates in nursing services, food, administrative and operational cost centers, as provided in subsections (4) and (5) of this section, shall be calculated by:

(a) Consulting the latest quarterly HCFA index available to the department no later than February 28 following the

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((first)) applicable calendar year to be used to measure the change to determine, as nearly as possible, the applicable price levels as of December 31 of the ((first)) applicable calendar year;

(b) Subtracting from the price levels taken from the quarterly HCFA index described in subsection (8)(a) of this section the price levels taken from the HCFA Index for the quarter occurring one year prior to ((the quarterly HCFA Index described in subsection (8)(a) of this section)) it; and

(c) Dividing the difference by the price levels from the quarterly HCFA Index occurring one year prior to the quarterly HCFA Index described in subsection (8)(a).

(9) If either the Implicit Price Deflator for Personal Consumption Expenditures (IDP) index or the Health Care Financing Administration (HCFA) index specified in this section ceases to be available, the department shall select and use in its place or their place one or more measures of change utilizing the same or comparable time periods specified in this section.

(10) The department shall compute the occupancy level for each facility ((in accordance with the following:

(a) For the first fiscal year of a state biennium,)) by dividing the actual number of ((patient)) resident days ((from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of that state biennium)) by the product of the number((s)) of licensed beds ((multiplied by)) and calendar days in the 1994 cost report period. If a facility's occupancy ((level)) is((+)

(i) At or above eighty-five)) below ninety percent, the department shall compute per ((patient)) resident day ((prospective rates and limits for)) nursing services, food, administrative((-)) and operational((-, property and return on investment components using actual patient days;

(ii) Below eighty-five percent, the department shall compute per patient day)) prospective component rates and limits ((for:

(A) Nursing and food components using actual patient days; and

(B) Administrative, operational, property and return on investment components using patient)) utilizing resident days at the ((eighty-five)) ninety percent occupancy level. ((b) For the second fiscal year of a biennium,)) The department shall ((compute the)) use actual occupancy level ((by dividing the actual number of patient days from the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that biennium by the product of the number of licensed beds multiplied by calendar days in that report period. The department shall:

(i) Compute the per patient day return on investment rate and prospective property rate when a facility's occupancy level is:

(A)) for facilities at or above ((eight-five)) ninety percent occupancy ((level, using actual patient days; or

(B) Below eighty-five percent using patient days at the eighty-five percent occupancy level.

(ii) Not adjust nursing, food, administrative and occupational rates for any change to actual patient days, calendar days, and/or occupancy as reported on the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that state biennium. For bed increases or decreases the department shall use WAC 388-96-709 and other applicable WACs to determine occupancy level.

(c) For new contractors as defined under WAC 388-96-026 (a) or (b), occupancy shall be based on a minimum of eighty-five percent for administrative, operations, property and return on investment)) for 1994. The higher of ninety percent occupancy or actual facility occupancy for 1994 shall be used in establishing these component rates for July 1, 1995, July 1, 1996, and July 1, 1997. The department shall compute per resident day property and return on investment prospective component rates utilizing resident days at the higher of ninety percent occupancy or actual facility occupancy for the prior calendar year for July 1, 1995, July 1, 1996, and July 1, 1997.

(11) If a nursing ((home provides residential care to individuals)) facility has full-time residents other than those receiving nursing facility care:

(a) The facility may request in writing, and

(b) The department may grant in writing an exception to the requirements of subsection (10) of this section by including such other full-time residents in computing occupancy. Exceptions granted shall be revocable effective ninety days after written notice of revocation is received from the department. The department shall not grant an exception unless the contractor submits with the annual cost report a certified statement of occupancy including all residents of the facility and their status or level of care.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-722 Nursing services cost area rate.

(1) The nursing services cost center shall include for reporting and auditing purposes all costs relating to the direct provision of nursing and related care, including fringe benefits and payroll taxes for nursing and related care personnel and for the cost of nursing supplies. The cost of one-to-one care shall include care provided by qualified therapists and their employees only to the extent the costs are not covered by Medicare, part B, or any other coverage.

(2) In addition to other limits contained in this chapter, the department shall subject nursing service costs to a test for nursing staff hours according to the procedures set forth in subsection (3) of this section.

(3) The test for nursing staff hours referenced in subsection (2) of this section shall use a regression of hours reported by facilities for registered nurses, licensed practical nurses, and nurses' assistants, including:

(a) Purchased and allocated nursing and assistant staff time; and

(b) The average patient debility score for the corresponding facilities as computed by the department. The department shall compute the regression ((every two years which shall be effective for the entire biennium, beginning July 1, 1993,)) only once for determination of rates from July 1, 1995 through June 30, 1998 and shall take data for the regression from:

(i) Correctly completed 1994 cost reports; and

(ii) Patient assessments completed by nursing facilities and transmitted to the department in accordance with the

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minimum data set (MDS) format and instructions, as may be corrected after departmental audit or other investigation, for the corresponding calendar report year and available at the time the regression equation is computed. Effective January 1, 1988, the department shall not include the hours associated with off-site or class room training of nursing assistants and the supervision of such training for nursing assistants in the test for nursing staff hours. The department shall calculate and set for each facility a limit on nursing and nursing assistant staffing hours at predicted staffing hours plus 1.75 standard errors, utilizing the regression equation calculated by the department. The department shall reduce costs for facilities with reported hours exceeding the limit by an amount equivalent to:

(A) The hours exceeding the limit;

(B) Times the average wage rate for nurses and assistants indicated on cost reports for the year in question, including benefits and payroll taxes allocated to such staff. The department shall provide contractors' reporting hours exceeding the limit the higher of their January 1983 patient care rate or the nursing services rate computed for them according to the provisions of this subsection, plus applicable inflation adjustments.

(4) For all rates effective after June 30, 1991, nursing services costs, as reimbursed within this chapter, shall not include costs of any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement (commonly referred to as "nursing pool" services), in excess of the amount of compensation which would have been paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period.

(5) Staff of like classification shall mean only the nursing classifications of registered nurse, licensed practical nurse or nurse assistant. The department shall not recognize particular individuals, positions or subclassifications within each classification for whom pool staff may be substituting or augmenting. The department shall derive the facility average hourly wage for each classification by dividing the total allowable regular and overtime salaries and wages, including related taxes and benefits, paid to facility staff in each classification divided by the total allowable hours worked for each classification. All data used to calculate the average hourly wage for each classification shall be taken from the cost report on file with the department's rates management office for the most recent cost report period.

(6) ~~((Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective rate setting))~~ For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the nursing services cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be those nursing facilities:

(i) Located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States

Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Not located within such an area (non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ~~((patient))~~ resident day adjusted nursing services cost from the ~~((prior))~~ 1994 cost report year, ~~((which shall include all costs of nursing supplies and purchased and allocated medical records,))~~ regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ~~((prior))~~ 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. Costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-774 and WAC 388-96-777 and commencing in the ~~((prior))~~ 1994 cost report year, shall be included in costs arrayed. Costs current-funded by rate add-ons commencing January 1 through June 30 ~~((following the prior cost report year))~~, 1995 shall be excluded from costs arrayed.

(c) The median or fiftieth percentile nursing facility cost in nursing services for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted nursing services cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the nursing services cost area prior to issuing new July 1 rates.

(7) ~~((Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates))~~ For July 1, 1995 rate setting only, nursing services component rates for facilities within each peer group shall be set ~~((for the first fiscal year of each state biennium))~~ at the lower of:

(a) The facility's adjusted per patient day nursing services cost from the ~~((most recent prior))~~ 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing services cost for the facility's peer group using the 1994 calendar year report data plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(8) Rate add-ons made to current fund nursing services costs, pursuant to WAC 388-96-774 and WAC 388-96-777 and commencing in the ~~((prior))~~ 1994 cost report year, shall be reflected in ~~((first fiscal year))~~ July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on any calculation or consideration of any such ~~((prior))~~ 1994 report year rate add-ons, a July 1, 1995 nursing services rate higher than that provided in subsection (7) of this section.

(9) ~~((For July 1, 1993 rate setting only, if a nursing facility is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such facility shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same facility's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date,~~

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inflated by any increase in the IPD Index authorized by WAC 388-96-719.

~~((10))~~ For July 1, 1993 rate setting only, nursing services rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's nursing services rate established under subsection (7) of this section. ~~((all rate setting beginning))~~ For July 1, 1995 and following rate settings, the department shall add nursing services rate add-ons, granted under authority of WAC 388-96-774 and WAC 388-96-777 ~~((and commencing from January 1 through June 30 preceding the start of a state biennium.))~~ to a nursing facility's rate in nursing services, but only up to the facility's peer group median cost plus twenty-five percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

~~((11))~~ ~~((10))~~ Subsequent to issuing ~~((the first fiscal year))~~ July 1, 1995 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted nursing services cost report information in departmental records as of October 31 ~~((of the first fiscal year of each biennium))~~, 1995. For any facility which would have received a higher or lower July 1, 1995 component rate ~~((for the first fiscal year))~~ in nursing services based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's nursing services component rate reflecting the recalculation, retroactive to July 1 ~~((of the first fiscal year))~~, 1995.

~~((12))~~ ~~((11))~~ For both the initial calculation of peer group median costs and the recalculation based on adjusted nursing services cost information as of October 31 ~~((of the first fiscal year of the biennium))~~, 1995, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated using October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

~~((13))~~ ~~((12))~~ Neither the per patient day peer group median plus twenty-five percent limit for nursing services cost nor the test for nursing staff hours authorized in this section shall apply to the pilot facility designated to meet the needs of persons living with AIDS as defined by RCW 70.24.017 and specifically authorized for this purpose under the 1989 amendment to the Washington state health plan. The AIDS pilot facility shall be the only facility exempt from these limits.

~~((14))~~ Beginning with July 1, 1994 prospective rates, a nursing facility's rate in nursing services for the second fiscal year of each biennium shall be that facility's nursing services rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.

~~((15))~~ The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 nursing services rates occurring within each biennium

shall be followed in the same order for each succeeding biennium))

~~((13))~~ For rates effective July 1, 1996, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996, pursuant to RCW 74.46.460, WAC 388-96-774, and 388-96-777.

~~((14))~~ For rates effective July 1, 1997, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997 nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services component rate as of June 30, 1997, excluding any rate adjustments granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-727 Food cost area rate. (1) The food cost center shall include for cost reporting purposes all costs of bulk and raw food and beverages purchased for the dietary needs of the nursing facility residents.

(2) ~~((Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective))~~ For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the food cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ~~((patient))~~ resident day adjusted food cost from the ~~((prior))~~ 1994 cost report year, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ~~((prior))~~ 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. The department shall include costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-777 and commencing in the ~~((prior))~~ 1994 cost report year, in costs arrayed. The department shall exclude costs current-funded by rate add-ons granted under the authority of WAC 388-96-777 and commencing January